

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of

CERTAIN FOAM FOOTWEAR

Investigation No. 337-TA-567

**NOTICE OF COMMISSION DECISION NOT TO REVIEW AN INITIAL
DETERMINATION GRANTING A JOINT MOTION TO TERMINATE THE
INVESTIGATION WITH RESPECT TO RESPONDENT D. MYERS & SONS, INC. ON
THE BASIS OF A SETTLEMENT AGREEMENT AND CONSENT ORDER; ISSUANCE
OF CONSENT ORDER**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (“ID”) (Order No. 37) issued by the presiding administrative law judge (“ALJ”) granting a joint motion to terminate the investigation on the basis of a settlement agreement and consent order and has issued a consent order.

FOR FURTHER INFORMATION CONTACT: Monica A. Stump, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3106. Copies of the ALJ’s ID and all other non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 11, 2006, based on a complaint, as amended, filed by Crocs, Inc. (“Crocs”) of Niwot, Colorado. 71 *Fed. Reg.* 27514 (2006). The amended complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain foam footwear, by reason of infringement of claims 1-2 of U.S. Patent No. 6,993,858; U.S. Patent No. D517,789; and the Crocs trade dress. The complaint identified 11 respondents, including D. Myers & Sons, Inc. of Baltimore, Maryland. The Commission terminated the investigation as to the trade dress allegations on September 11, 2006.

On November 9, 2006, D. Myers and Complainant Crocs jointly moved to terminate the investigation based on a consent order. The Commission investigative attorney supported the motion.

On November 28, 2006, the presiding ALJ issued an ID granting the joint motion to terminate the investigation. The ALJ found that the joint motion complied with the requirements of Commission Rule 210.21(c) (19 C.F.R. § 210.21(c)) by including copies of the consent order stipulation and proposed consent order. The ALJ further found that the motion complied with Commission Rule 210.21(b) (19 C.F.R. § 210.21(b)), because the parties included copies of the settlement agreement and a statement that there are no other agreements, written or oral, express or implied, between the parties concerning the subject matter of the investigation. In addition, under Commission Rule 210.50(b)(2) (19 C.F.R. § 210.50(b)(2)), the ALJ concluded that termination of this investigation would not impose any undue burdens on the public health and welfare, competitive conditions in the United States economy, or United States consumers. Accordingly, the ALJ terminated the investigation with regard to D. Myers. No petitions for review of the ID were filed.

Having examined the record of this investigation, the Commission has determined not to review the ALJ's ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42).

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: December 19, 2006